

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of:)	
)	
Elimination of Rate-of-Return Regulation of)	RM No. 10822
Incumbent Local Exchange Carriers)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
_____)	
To: The Commission		

**REPLY COMMENTS OF
NEXTEL PARTNERS, INC.**

Nextel Partners, Inc. (“Nextel Partners”), by its attorneys, hereby files these Reply Comments in the above-captioned proceeding. Nextel Partners supports the opening of a Commission docket to examine the role of incumbent local exchange carrier (“ILEC”) rate of return (“ROR”) regulation in the inflation of the Universal Service Fund (“USF”). In this proceeding, the Commission should consider a wide range of regulatory approaches based on forward-looking costs with the goal of establishing control on the growth of the USF. Nextel Partners agrees that Western Wireless’ Petition for Rulemaking (the “Petition”)¹ is an appropriate vehicle for the consideration of Western Wireless’ recommendations, as well as for analyzing other possible approaches that could be used to address continuing demands on growth of the USF. In light of the Commission’s explicit recognition in its recent *Virginia Cellular* Order² of the public

¹ Western Wireless Petition for Rulemaking, *In the Matter of Elimination of Rate-of-Return Regulation of Incumbent Local Exchange Carriers*, CC Docket No. 96-45, RM-10822 (filed October 30, 2003) (the “Petition”).

² *In the Matter of Federal-State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the*

interest benefits of *mobility* that wireless carriers provide to the rural sector, any changes in the USF funding mechanism that are ultimately adopted must promote, rather than discourage, competitive wireless service provision in rural areas.

Opposing commenters, consisting chiefly of rural telephone companies, their organizations and other representatives (the “RTC Commenters”) argue that forward-looking cost methodology cannot properly be applied to RTC operations.³ However, Nextel Partners generally agrees with Western Wireless that regulating ILECs based on recovery of embedded or historical costs rather than on forward-looking costs tends to insulate ILECs from their own inefficiencies. This result is antithetical to the spread of viable competition and new, innovative technologies and services in rural areas, bringing concomitant benefits to rural consumers.

In addition, some of the RTC Commenters claim that it is not ROR regulated ILECs, but rather competitive ETCs, and in particular, wireless ETCs, that pose a threat to the USF, and therefore to the provision of Universal Service in the rural sector.⁴ Nextel Partners disagrees with these assertions and notes that recent studies conducted by CTIA show otherwise.⁵ As shown by the CTIA-produced graph attached as **Exhibit 1** hereto, in 2003, ILECs were projected to collect approximately \$3.17 billion in High Cost program subsidies, approximately \$1.5 billion more than they collected in 1999.

Commonwealth of Virginia, CC Docket No. 96-45, FCC 03-338 (rel. January 22, 2004) (“*Virginia Cellular*”).

³ See, e.g., Comments of CenturyTel at 13; ORTC at 12; PRTC at 5; RICA at 10; SDTA at 5; Valor at 3-4.

⁴ See, e.g., Comments of CenturyTel at 6 *et seq.*; ERTA at 7-8; Oklahoma Rural Telephone Companies (“ORTC”) at 3-4; TCA at 4.

⁵ See Graph, “Wireless High Cost Support v. Rural LEC High-Cost Support,” submitted with CTIA’s October 30, 2003 *ex parte* presentation in CC Docket No. 96-45 to the Commission’s Wireline Competition Bureau, attached as **Exhibit 1** hereto.

Wireless carriers, in comparison, were projected to collect only \$102 million in High Cost program subsidies for 2003. Moreover, as established in the record of WT Docket 02-381 by the Universal Service Administrative Company, by the end of 2002, there were only 44 wireless competitive ETCs in operation, with only 29 receiving High Cost Program support.⁶ Total subsidies paid to these wireless ETCs for the provision of Universal Service supported services in 2002 amounted to *less than \$63 million* for all categories of High Cost Support combined.⁷

Nextel Partners submits that the issues raised by Western Wireless in its Petition are relevant, timely and urgent. For the sake of the rural consumer and all of the contributors to and beneficiaries of the USF, these issues need to be addressed as soon as reasonably practicable, whether in the context of a separate rulemaking as suggested in the Petition, or in a Joint Board proceeding.⁸ Nextel Partners agrees with the comments of Nextel Communications that any proceeding addressing the issues raised by Western Wireless should consider a range of alternatives for exerting control over USF funding mechanisms.⁹

Congress has specifically determined that consumers in rural, insular and high cost areas should be afforded access to telecommunications and information services that are reasonably comparable to those provided in urban areas, at rates that are reasonably

⁶See March 25, 2003 Letter and Attached Spreadsheet from Linda J. Miller, Deputy General Counsel of Universal Service Administrative Company in WT Docket 02-381, attached as **Exhibit 2** hereto.

⁷ *Id.*

⁸ For example, T-Mobile recommends in its comments that the Commission should task the Joint Board with developing new forward-looking cost methodologies for carriers serving rural areas. *See* Comments of T-Mobile at 10-12.

⁹ *See* Comments of Nextel Communications at 2.

comparable to those afforded urban consumers.¹⁰ As the Commission recognized recently in *Virginia Cellular*, it is in the public interest for consumers in rural and high cost areas to have the additional benefits of *mobility* that can only be provided by wireless telecommunications providers. With the spread of diverse, state-of-the-art *wireless* technologies in rural, high cost and insular areas, the rural consumer for the first time in history is poised to enjoy the range and types of communications capabilities that were once strictly limited to residents in densely-populated urban areas.

In the development of its policies for regulation of rural LECs and funding the USF, the Commission must look to the future – the future of the consumer in rural, high cost and insular areas. The Commission should be careful to ensure that any changes to the USF funding mechanism that are adopted promote, rather than discourage, state-of-the art, competitive wireless service provision in rural areas. Measures intended to control the growth of the USF should not come at the expense of depriving the rural sector of the “unique value that mobile services provide to rural consumers.”¹¹

¹⁰ See 47 U.S.C. § 254(b)(2) (“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”)

¹¹ See *Virginia Cellular*, Statement of Chairman Powell at 1.

CONCLUSION

Nextel Partners respectfully requests that the Commission take action consistent with the views expressed herein.

Respectfully submitted,

NEXTEL PARTNERS, INC.

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EXHIBIT 1

CTIA Graph

EXHIBIT 2

USAC Letter and Spreadsheet